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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,957	02/18/2005	Robert Petrosenko	HLR.0112P-US/KCIN:088US	1060
66/404 7590 02/25/2010 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVENUE SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
02/25/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,957

Applicant(s)

PETROSENKO ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-16, 19, 23 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 9-12, 23-25 and 27 is/are allowed.
- 6) ☒ Claim(s) 13-16, 19, 28, 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 3, 2009 has been entered.

Response to Arguments

2. Applicant's arguments, see Remarks, filed December 3, 2009, with respect to the rejections of claims 1-7, 9-12, 23-25 and 27 under 35 U.S.C. 102 and 35 U.S.C. 103 have been fully considered and are persuasive. The rejections of claims 1-7, 9-12, 23-25 and 27 under 35 U.S.C. 102 and 35 U.S.C. 103 have been withdrawn.

3. Applicant's arguments with respect to the rejection(s) of claim(s) 13-16, 19, 28 and 29 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a new prior art reference.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 13-16, 19, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibertoni (EP 1,190,732 A1) in view of Lockwood *et al.* (WO 02/43634 A2).

With respect to **claim 13**: Gibertoni discloses a wound insert considered herein to be fully functional for use with a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source, the wound insert being positioned between the vacuum bandage and a wound surface of the wound, the wound insert comprising the following: a body 10 made of a generally non-porous, flexible material, namely silicone, wherein the body is cylindrical in shape, wherein a height of the cylindrical body is substantially greater than a diameter of the cylindrical body (Fig. 4), and further wherein the body includes a single passageway along a longitudinal axis of the body which extends between and through a top end and a bottom end of the body. (Fig. 4) (whole document)

With regard to the limitation "for use with a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source, the wound insert being positioned between the vacuum bandage and a wound surface of the wound", the insert of Gibertoni is fully functional for use with any vacuum bandage because it meets all of the structural and functional limitations of claim 1. However, patentable weight is given to the limitations in the preamble herein, and Gibertoni

does not disclose a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source. Lockwood discloses a vacuum bandage that includes a wound dressing member 20 coupled to a wound, a port 26 of the wound dressing member 20 and a tube 13 coupled to the port and to a vacuum source. Lockwood discloses in Fig. 27 a tunneling wound and a cylindrical wound dressing member, thus it is the examiner's position that the wound dressing member 20 would be suitable for use with the insert of Gibertoni. Further, both the wound dressing and the Gibertoni insert provide pathways for suction drainage which facilitate quicker drainage and wound healing. Therefore, it would be obvious to one of ordinary skill in the art to use the insert of Gibertoni with the wound dressing of Lockwood in a tunneling wound with a reasonable expectation of success to facilitate quicker drainage and wound healing, wherein the insert of Gibertoni is placed in the wound cavity between the wound dressing member and the surface of the wound.

With respect to **claim 14**: As can be seen in Fig. 1 of Gibertoni, the body 10 is generally rod-shaped.

With respect to **claim 15**: Applicant has not clearly and explicitly defined the bounds of the recited range "approximately 0.0925 inch (2.35 mm)", therefore the claim is given its broadest reasonable interpretation. Gibertoni discloses a diameter of 2.3 mm, which is considered herein to satisfy the limitation of "approximately 0.0925 inch (2.35 mm)."

With respect to **claim 16**: The body 10 disclosed by Gibertoni includes discrete passageways 12. ([0020], col. 3)

With respect to **claim 19**: The body 10 disclosed by Gibertoni is made of a generally non-adhesive material, namely silicone.

With respect to **claim 28**: The body 10 disclosed by Gibertoni is hollow to define a central conduit therethrough that is divided into four channels 12.

With respect to **claim 29**: The body 10 further defines passageways, surface slits 15, formed through the body to communicate with the central conduit. ([0020], col. 3)

Allowable Claims

7. Claims 1-7, 9-12, 23-25 and 27 are allowed.

Reasons for Allowance

8. The following is an examiner's statement of reasons for allowance: Applicant presented arguments which overcame the rejections of independent claims 1 and 12 under 35 U.S.C. 102 as anticipated by Lockwood. Specifically, Lockwood does not disclose or suggest a single embodiment comprising both a cover configured for placement over the wound that engages healthy skin and a wound insert configured for placement within the wound between the wound surface and a wound dressing member. Lockwood discloses an embodiment of a vacuum bandage system, e.g. in Figs. 1, 3 and 16 having a cover that engages healthy skin but no wound insert meeting the claim limitations, and a second embodiment in Figs. 26 and 27

showing a vacuum bandage system that could function as a wound insert. However, if the member 219 was used as an insert, it would not meet the claim limitation as to a non-porous wound insert between a wound dressing member and a wound surface. As the Lockwood reference is the closest prior art of record, and all outstanding rejections over the closest prior art of record have been overcome, claims 1 and 12 and claims 2-7, 9-11, 23-25 and 27 depending directly or ultimately from claims 1 and 12 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761